Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

REPLY COMMENTS OF O1 COMMUNICATIONS, INC.

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O1 Communications, Inc. ("O1") respectfully files these Reply Comments pursuant to the Commission's September 8, 2017 Public Notice issued in the above captioned proceedings.[1]

I. INTRODUCTION AND SUMMARY

O1 is a California-based competitive local exchange ("CLEC") and interexchange carrier ("IXC") that provides a variety of services including wholesale and retail interconnected and non-interconnected Voice over Internet Protocol ("VoIP") services.[2] O1's services enable its small and medium business and VoIP provider customers to complete voice calls destined to other VoIP service providers as well as to the PSTN and customers of other wireless and wireline carriers. O1's connectivity to other providers is comprised of both direct and indirect connections. Ideally O1 would determine whether to interconnect directly or indirectly based on network efficiencies and economics. Unfortunately, however, O1's experience is that its method of interconnection is instead often determined by the unilateral decisions of the terminating carriers.

O1 supports the comments of the parties in the opening round that argue (1) terminating carriers should have an obligation to allow direct connection if requested[3]; (2) transit/tandem carriers that have invested in intermediate networks should be able to recover their costs and a

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[1] *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 6856 (rel. Sept. 8, 2017) ("*Notice*").

[2] O1 provides services on its own as well as in conjunction with its affiliates, Vaya Telecom, Inc. and Inter Vista Networking, Inc.

[3] Comments of Peerless Network, Inc., West Telecom Services, LLC, Peninsula Fiber Network, LLC, Alpha Connect, LLC, Rural Telephone Service Company, Inc., Nex Tech, LLC and Tennessee Independent Telecommunications Group, LLC, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("Carrier Coalition Comments") 11-22; Comments of AT&T Services, Inc. to Refresh the Record, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("AT&T Comments") at 7-14; Comments of CenturyLink, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("CenturyLink Comments") at 8-9.

reasonable profit[4]; (3) the existing tandem switching and transport rules should be followed by incumbent local exchange carriers ("ILECs") that own the tandem and end office switches[5]; (4) ILEC transit rates should be capped at their lowest tandem switched access rates; and (5) the Commission should continue to oversee the transition from TDM to IP interconnection. In addition, in response to comments regarding 8YY access charge reform, O1 reiterates and incorporates by reference herein the comments that it provided in its November 1, 2017 letter filed in this proceeding[6] and its Opposition to AT&T's Petition for Forbearance.[7]

II. DISCUSSION

A. Terminating Carriers Should Have an Obligation to Allow Direct Connection If Requested.

CenturyLink's Comments urge the Commission to make clear that "terminating carriers have the obligation to offer direct termination if requested" because the originating carriers with the obligation to pay for the call should be able to determine which option – direct or indirect connection -- makes the most sense. This would also promote healthy competition in the transit market.[8] The Carrier Coalition agrees, demonstrating that requiring terminating carriers to permit direct connection "is necessary to stop arbitrage schemes under which certain terminating

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[4] Carrier Coalition Comments at 29-30.

[5] Comments of Sprint Corporation, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("Sprint Comments") at 4-5; Carrier Coalition Comments at 8-11; Comments of NCTA – The Internet & Television Assoc., WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("NCTA Comments") at 4; *see also Level 3 Communications, LLC v. AT&T, Inc., Formal Complaint*, EB Docket No. 17-227 (Sept. 12, 2017).

[6] November 1, 2017 Letter from O1 Communications, Inc. to Marlene H. Dortch, WC Docket No.10-90 and CC Docket No. 01-92 ("Nov. 11, 2017 Letter").

[7] O1 Communications, Inc.'s Opposition to Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. §160(c), WC Docket No. 16-363 (Dec. 2, 2016) ("Dec. 2, 2016 Opposition"). Although AT&T recently withdrew its Petition for Forbearance, some of the same issues are addressed in AT&T's Comments in this docket and O1's Dec. 2, 2016 Opposition presents O1's response to those Comments.

[8] CenturyLink Comments at 8-9.

carriers require traffic to be sent through a designated intermediate carrier partner that imposes charges that the terminating carrier could not impose itself."[9] Moreover, requiring direct connection "will increase the availability of competitive routing and interconnection services" and "promote competition among intermediate carriers, which will drive costs down, improve service quality and spur innovation."[10] Additionally, the Coalition points out that requiring direct connection furthers redundancy, which "promotes public safety and reduces traffic concentration problems, such as network outages and traffic disruptions."[11]

AT&T also encourages the Commission to adopt a rule "that the carrier that bears the financial responsibility to deliver traffic to (or from) the edge has the unfettered right to choose how and by what arrangements it will deliver that traffic to (or from) the designated network edge" because, it too observes carrier tactics designed to force a sending carrier to use inefficient and costly arrangements to deliver traffic to their network.[12] AT&T explains, "Under the current Commission rules, there is a mismatch because the sending carrier can be obliged in most cases to deliver and pay the costs of transporting the call to the terminating end office, but then some terminating carriers and/or intermediate transport providers have insisted that they have the right to dictate the transport route used by the sending carrier," which creates arbitrage activities.[13] AT&T therefore urges the Commission to adopt a rule that "[t]he receiving carrier would be obligated to accept the traffic at its edge, and could not refuse to interconnect at that point, or

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[9] Carrier Coalition Comments at 11, 13-21.
[10] Id. at 21.
[11] Id. at 22-23.
[12] AT&T Comments at 7-8.
[13] Id.

impose conditions or obligations on the interconnection (so long as the method of interconnection were technically feasible)."[14]

O1 has likewise observed, and has been subjected to arbitrage schemes whereby, when acting as terminating carriers for the called party, wireless carriers have unilaterally disconnected existing direct connections and have refused to permit O1 to continue to directly interconnect with their networks. Instead, O1 is forced to terminate all traffic through a single – or perhaps a limited few – intermediate carrier(s) designated by the wireless provider. When this occurs, O1 is required to pay a high transit or tariffed access rates, or inflated commercial rates of these single or select few intermediate carriers.[15]

Upon information and belief, these wireless providers typically also simultaneously enter into agreements with the selected intermediate carrier(s) to terminate their traffic – by which the wireless provider obtains a revenue share in the access charges imposed by the intermediate carriers on O1 and other carriers for the transit/tandem services. In at least one case, where the intermediate carriers are affiliates of the wireless provider, an express agreement to revenue share may not exist but the corporate entity as a whole benefits from a revenue stream that would not be available if carriers were not forced to terminate all of their traffic destined to the wireless affiliate through the indirect routes of its affiliates.

For instance, for years AT&T Mobility and O1 transmitted traffic destined for each other's customers over direct connections pursuant to contract. In early 2016, however, because

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[14] Id.

[15] See *O1 Communications, Inc. v. T Mobile USA, Inc.,* Verified Complaint, California Public Utilities Commission Case No. 15-11-018 (November 30, 2015) The parties eventually jointly moved to dismiss the Complaint and attempted to explore arbitration or mediation alternatives, which efforts were not successful; *O1 Communications, Inc. v. New Cingular Wireless PCS, LLC,* Verified Complaint, California Public Utilities Commission Case No. 15-12-020 (December 28, 2015) The Complaint is currently pending.

O1 would not agree to unreasonable terms in a new agreement proposed by AT&T Mobility, AT&T Mobility refused to enter into the agreement with O1 and unilaterally disconnected the existing direct connections. One of the unreasonable conditions that O1 disputed required O1 to route all of its interMTA traffic, not over the existing direct connections, but instead indirectly through separate facilities of AT&T Mobility's affiliated long distance entity pursuant to a separate unregulated commercial agreement. Requiring O1 to route traffic indirectly through AT&T's commercial product to reach AT&T Mobility customers not only imposed unnecessary transit/tandem access charges on O1, it also gave AT&T freedom to set unreasonably high prices to transit calls to AT&T Mobility's multi-million member customer base. Since the disconnection of the direct connections, AT&T's commercial rate to transit the traffic has increased significantly.

The other primary indirect route available to reach AT&T Mobility's customer base is that of AT&T's ILEC affiliate, AT&T California. Rather than exchanging traffic with AT&T Mobility over the direct connections at bill and keep, disconnecting O1's direct connections forced O1 to purchase additional interconnection trunks and transit additional calls through AT&T California. O1 is but one of the hundreds of carriers whose customers call AT&T Mobility's customers. Requiring sending carriers to route traffic indirectly through AT&T's ILEC affiliates generates millions of dollars of revenue for the ILEC that would not exist but for the refusal of AT&T Mobility to permit direct connections.

The third indirect route that O1 has been forced to use for a limited number of its customer calls destined to AT&T Mobility customers is through a few select direct connections that remain in place between AT&T Mobility and its preferred competitive carriers - thereby

discriminating against O1, which is the subject of the ongoing case between O1 and AT&T Mobility at the California Public Utility Commission.[16]

O1 experienced similar gamesmanship from T Mobile. For years, O1 and T Mobile had a traffic exchange agreement ("TEA") in place which enabled the parties to establish two way direct connections using IP connection to exchange all traffic – both interMTA and intraMTA and both retail and wholesale -- between their networks. In August of 2015, T Mobile and a third party CLEC announced that they reached an agreement whereby the CLEC would act as T Mobile's "sole" transit provider. In other words, all phone calls destined to T Mobile's end users were going to be funneled through one CLEC in order to reach T Mobile's customer base. Upon information and belief, through this agreement, the CLEC shares the access revenue it receives from originating carriers with T Mobile.

Shortly after this announcement, T Mobile disconnected O1's direct connections, blocking all traffic so that calls from O1's customers to T Mobile's customers could not be completed. At the same time, O1's rates to route traffic indirectly through the T Mobile chosen CLEC increased by 400%. Since O1's direct connections were disconnected, not only has O1 been forced to route traffic indirectly to T Mobile's customers but the alternative routes that had previously been available to O1 to route traffic to T Mobile have increasingly been eliminated. For some time after the disconnection, O1 customers experienced high rates of post dial delay and non-completion because the alternative routes to transmit the traffic to T Mobile did not have sufficient capacity to handle the additional traffic that had previously been transmitted over the direct connections.

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[16] *Order Granting Rehearing of Decision 16-09-005 and Vacating the Decision, O1 Communications, Inc. v. New Cingular Wireless PCS, LLC,* California Public Utilities Commission, Case No. 15-12-020 (D. 17-08-016), issued Aug. 11, 2017.

T Mobile's refusal to make available direct connections to O1 and other carriers while simultaneously forcing the delivery of their traffic through one CLEC, which in turn shares the access charge revenues with T Mobile, constitutes an unlawful access arbitrage scheme. T Mobile's refusal to allow direct connections denies O1 (and other carriers) economically efficient interconnection in order to enrich itself by collecting revenues which it otherwise would not be legally entitled to collect.

In 1995, when it examined rules governing interconnection of CMRS providers, the Commission assured industry participants that it "stands ready to intercede in the even a CMRS provider refuses a reasonable request to interconnect." And, that it would be "particularly vigilant in policing, where they exist, any efforts by CMRS providers to deny interconnection in order to gain an unfair competitive advantage."[17] As an example of potential abuses that may occur, the Commission described a situation where "LEC investment in, and affiliation with, the party denying interconnection an important factor in assessing whether such denial was motivated by an anticompetitive animus." The Commission observed that a CMRS carrier affiliated with a LEC may refuse direct connection to maintain the revenue stream to the LEC associated with transiting traffic between other carriers and the affiliated CMRS provider thereby "rais[ing] rivals' costs of doing business and hence hinder[ing] competition."[18]

The two examples of abuse detailed above demonstrate that the time has come for the Commission to intercede to prevent CMRS providers, and perhaps others, from continuing to refuse reasonable requests for direct connection. Requiring terminating carriers to accept

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[17] *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,* Second Notice of Proposed Rulemaking, 10 FCC Rcd 1066, 10687 (rel. Apr. 20, 1995) at ¶43.

[18] Id.

requests for direct connection would help prevent these abuses and the harm to competition and public interest that results.[19]

B. Transit/Tandem Carriers That Have Invested In Intermediate Networks Should Be Able To Recover Their Costs And A Reasonable Profit

O1 agrees with the Comments of the Carrier Coalition and CenturyLink, which argue that bill and keep should not apply to transit/tandem services.[20] For various reasons, carriers and other service providers do not always physically interconnect with each other. The partnership between VoIP providers and LECs is a key example of the use of intermediate carriers efficiently to complete calls between end users of different service providers when a service provider does not own its own network or interconnect with the PSTN. VoIP providers typically do not maintain their own networks and do not enter into Section 251 interconnection agreements with ILECs. Service providers directly serving the calling party generally bear the cost to transit customer traffic to the outside world and have choices of how to do so. They can employ their own infrastructure, lease infrastructure from other carriers, purchase switched transport by the minute of use, or use a variety of these options at once. If the sending provider relies on another provider rather than build its own network, ideally it can choose among a number of wholesale providers. That provider may be the terminating carrier, a third-party alternative or some combination of the two. No matter which option is chosen, the financial obligation to transport the call remains with the sending provider. If a sending provider relies on a third party or the terminating carrier, it must pay the carrier, which in effect it has hired as a subcontractor for performing that function.

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[19] Carrier Coalition Comments at 20-23.
[20] Carrier Coalition Comments at 23-24; CenturyLink Comments at 5.

Third party carriers that bridge the gap between originating and terminating carriers must be compensated for the services they provide. In direct connection, bill and keep makes sense. For one, it is more efficient to require the terminating carrier to recover its costs directly from its own end user customers, who have chosen their network provider, than to permit recovery from other carriers.

This rationale for bill and keep has no bearing, however, on the question of compensation for intermediate third party carriers in cases of indirect interconnection. In that context, the sending provider hands off traffic to the third party carrier, which transports it over its own network and in turn hands it off to the terminating carrier. The sending provider has hired this third party to fulfill its financial obligation to deliver traffic to the terminating carrier's network. By definition, the third party provider has no contractual relationship with either the calling party or the called party and it therefore may not recover from either one the costs that it incurs in providing these third party services. Instead, its only relevant customer is the sending carrier, from whom it must recover its costs; and the sending provider is free to pass through those costs to its end users. The financial arrangement gives the sending provider appropriate incentives either to build out its network or to outsource the same network functions to a third party, depending on whether it is more economically efficient to build or to buy. The Commission would destroy those incentives if it forced third party intermediaries to perform these functions for free, with no hope of cost recovery from anyone who is involved in the relevant traffic exchanges and who causes the relevant costs.

C. The Existing Tandem Switching And Transport Rules Should Be Followed By ILECs That Own The Tandem And End Office Switches

O1 disagrees, however, with the aspect of CenturyLink's Comments arguing that ILECs and their affiliates that own both the end office and tandem switches should be compensated

through intercarrier compensation for tandem services. A corporate entity that owns both the tandem and end office has a relationship with the called party and a corresponding revenue stream associated with the end user, which intermediate carriers that are not affiliated with the owner of the end office do not have. In addition, as the above discussion demonstrates with regard to the arbitrage engaged in by AT&T Mobility with its affiliates, AT&T California (ILEC) and AT&T Corp. (commercial "AVOICs" product), such arrangements create incentives to engage in arbitrage schemes. As NCTA and Sprint argue, the Commission should clarify that the current rule mandating that effective July 1, 2018, bill and keep apply to tandem switched transport in the situation where a price cap carrier owns both the tandem and end office switches also applies when an affiliate of the price cap ILEC, including CLECs, wireless providers and VoIP providers, own the end office switch.[21]

D. ILEC Transit Rates Should Be Capped At Its Lowest Tandem Switched Access Rates.

In California, AT&T California's interstate tandem switched access rates are divided into three zones. AT&T California's transit rate is nearly 700 times its lowest interstate tandem switched access rate! As the Commission has recognized, transit (non-access) and tandem switched access functions are the same.[22] Therefore, there is no cost based reason for such inflated transit rates.

As pointed out by NCTA, "[b]ecause of the monopoly position they occupied in the marketplace at the time competition was introduced, the largest incumbent LECs tend to be the leading providers, an in many areas the only providers, of [transit and tandem switched transport]

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[21] NCTA Comments at 4-5; Sprint Comments at 5; *see also* Formal Complaint of Level 3, *Level 3 v. AT&T*, EB Docket No. 17-227 (filed Sept. 12, 2017).

[22] In the Matter of Developing an Unified Intercarrier Compensation Regime, Report and Order, 26 FCC Rcd 17663, 18115, ¶1313 (2011)

services."[23] ILECs will continue to play a role moving forward to enable interconnection between carriers that are not directly connected. Unreasonably high transit rates, such as those of AT&T California, "raise consumer costs, frustrate competitive entry and distort the market."[24] AT&T California's unreasonably high transit rate also exacerbates the harm that results from the arbitrage that AT&T California engages in with its affiliate, AT&T Mobility. To minimize such arbitrage and the harm that results from unreasonably high non-cost based rates, O1 requests that the Commission order the ILECs to cap their transit rates at their lowest tandem switched access rates.

E. The Commission Should Oversee the Transition to IP Interconnection

AT&T argues that IP to IP interconnection "should remain unregulated."[25] O1 disagrees and requests that the Commission continue to oversee the transition to IP interconnection to ensure that the competitive benefits of the 1996 Telecommunications Act are realized during and after the transition. For the same reasons that the largest ILECs continue to dominate the TDM market, the largest ILECs also dominate the IP interconnection market.[26] Contrary to Sprint's experience with the other large carriers, wherein it has been successful in obtaining and implementing agreements for IP interconnection,[27] O1 has been unable to obtain IP interconnection with the large carriers. In fact, when O1 approached AT&T and CenturyLink to request IP Interconnection, the carriers declined. To date, O1's efforts to enter into IP interconnection agreements with these carriers have been unsuccessful. The Commission must

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[23] NCTA Comments at 3.
[24] Id. at 4.
[25] AT&T Comments at 24-26.
[26] See Comptel's Responses to Questions in "Modernizing the Communications Act," January 31, 2014 at note 2; 8_08_14_Comptel_Response_to_Energy_and_Commerce_CommActUpdate_Interconnection_Whitepaper.pdf
[27] See Sprint Comments at 2-3.

continue to address market power and market dominance issues through the IP transition and ensure that dominant carriers are not allowed to enact barriers to entry that will hinder a healthy competitive market.[28]

O1 requests that the Commission require the large ILECs and their IP affiliates to negotiate with requesting carriers for IP interconnection at reasonable rates, terms and conditions or at a minimum, require the incumbents and their IP affiliates to permit competitive carriers to "opt into" agreements that are already in place. This will help to enable competition to develop in a non-discriminatory way and prevent the large ILECs from unilaterally choosing the winners and losers in the IP marketplace.

III. CONCLUSION

O1 thanks the Commission for the opportunity to refresh the record in this proceeding and for the foregoing reasons, requests that the Commission establish rules consistent with the above comments as well as the comments in its Nov. 11, 2017 Letter and Dec. 2, 2016 Opposition.

Dated this 20th day of November 2017.

Respectfully Submitted,

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[28] Comptel's Responses to Questions at 4-6.